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5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
-----X

7 DAVID HO, on behalf of himself
and all others similarly situated
8 and on behalf of the general
public and DOES #1-20,

9 Plaintiffs,

10 -against-

11 ERNST & YOUNG LLP

12 Defendants.

13 -----X

Case No. 05-04867-JF/HRL

PLAINTIFF'S THIRD MOTION TO
COMPEL PRODUCTION OF
DOCUMENTS AND INFORMATION
FROM DEFENDANT PURSUANT TO
F.R.C.P. RULE 37

Hearing date: May 29, 2007
Hearing time: 10:00 a.m.

14 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

15
16 PLEASE TAKE NOTICE, that the plaintiff, David Ho, hereby moves
17 this Court for an Order compelling the production of documents and
18 information from the defendant, Ernst & Young LLP, such motion to be
19 heard by the Honorable Howard R. Lloyd of this Court on May 29,
20 2007, at 10:00 a.m.

21
22 The plaintiff's motion seeks the production of documents
23 responsive to the plaintiff's Third Request for production of
24 documents and information responsive to the plaintiff's First Set of
25 Interrogatories. The disclosures being sought, as detailed in this
26 motion, involve the work performed by the members of the putative
27 plaintiff class and the identification of witnesses with knowledge
28 relevant to the class certification issues in this case.

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MEMORANDUM OF POINTS AND AUTHORITIES**STATEMENT OF FACTS AND NATURE OF CASE**

This is a putative class action case for unpaid overtime wages under California law. The defendant employed the plaintiff and numerous other similar persons (collectively the "class members") on a salary basis and often had them working in excess of 40 hours per week. Defendant did not pay overtime wages to the class members. Defendant maintains that its pay practices were proper because the class members were exempt from the overtime pay requirements of California law as salaried "professional" employees. The central issue in this case is whether the class members were properly treated by defendant as salaried overtime exempt professional employees.

**ISSUES TO BE DECIDED, THE NATURE OF THE
DISCOVERY SOUGHT, AND DEFENDANT'S OBJECTIONS**

Plaintiff's Third Request for production of documents (Ex. "A", with defendant's response at Ex. "B") seeks the disclosure of documents that will assist in determining the nature of the work typically performed by the class members. As discussed, *supra*, whether the work typically performed by the class members was similar (or dissimilar) in nature is likely to bear on whether class certification is appropriate in this case. Plaintiff is requesting four sorts of documents that relate to this issue. Plaintiff's requests, recited in summary form, and defendant's verbatim responses, are:

Request 1: Seeks documents setting forth defendant's policies or suggestions of the sort of work that was intended to be given to (or not given to) class members. This request includes communications on the sort of work to be given (or not given) to the

1 class members either from or to the persons managing them.

2 Defendant produces no documents in response to this request
3 (except for stating that it has previously produced unspecified
4 documents that describe the individual plaintiff's job duties). It
5 promises to provide "job description documents and evaluation forms"
6 pertaining to certain class members (which it has not yet done) and
7 makes the following objection to production:

8 Defendant objects to this Request on the ground that it is
9 overbroad as to time and scope, unduly burdensome, and
10 premature, including because a class has not been certified in
11 this action. Defendant also objects to this request to the
12 extent that it calls for documents that are protected by the
13 attorney client privilege and/or work product doctrine.
14 Defendant further objects to this Request on the ground that it
15 is duplicative of Plaintiff's Request for Production No. 2
16 propounded in Plaintiff's Request for Production Set One.
17 Defendant has already produced responsive documents that
18 describe plaintiff's job duties. Defendant further objects to
19 this Request on the ground that it is vague and ambiguous as to
20 the terms "sort of work duties that either were, or should have
21 been, or were not to be, or should not have been, performed by
22 persons similarly situated to the plaintiff and "work duties
23 that were from, given to, or relied upon, by those employees of
24 the defendant who were responsible for managing and/or giving
25 work assignments to the persons similarly situated to the
26 plaintiff.

27 Request 2: Seeks documents on the defendant's "utilization rate
28 and return" for the class members. That term, which is defined in
29 plaintiff's request, involves the defendant's practice of billing
30 certain work time of the class members to its clients. The
31 defendant, presumably, had guidelines describing what activities of
32 the class members were appropriate to bill to its clients, and what
33 were not. The defendant also presumably undertook studies or an
34 analysis of what activities the class members were actually
35 performing and were being billed to its clients and/or could perform
36 and bill to its clients. Plaintiff seeks production of all such
37 documents.

Defendant provides no documents in response to this request,

1 but promises to provide a single non-privileged responsive document
2 that "explains" the utilization rate (which it has not yet provided)
3 and makes the following objection:

4 Defendant objects to this Request on the ground that
5 it is vague and ambiguous as to the term "materials on the
6 utilization rate and return". Defendant further objects
7 to this Request on the ground that it is overbroad.
8 Defendant also objects to this Request to the extent that
9 it calls for documents that are protected by the attorney
10 client privilege and/or work product doctrine.

11 Request 3: Seeks documents mentioning complaints that were made
12 to the defendant about the nature of the work being performed by
13 class members. The only complaints sought are those where it was
14 alleged that the work given to such persons was of a rote, low
15 level, or menial nature, or was otherwise inappropriate because
16 based upon the education and/or experience of such persons the work
17 they were given should involve more intellectual exertion.

18 Defendant produces no documents in response to this request and
19 makes the following objection:

20 Defendant objects to this Request on the ground that
21 it is overbroad as to time, unduly burdensome, lacks
22 foundation, and is premature, including because a class
23 has not been certified in this action. Defendant further
24 objects to this request on the ground that it is compound
25 and vague and ambiguous as to the phrase "the nature of
26 the work performed by the persons similarly situated to
27 the plaintiff was inappropriate and of a too menial or
28 rote or low level basis, or was otherwise inappropriate,
 because such persons, based upon their education and/or
 experience and/or training and/or the representations made
 by defendant to such persons when they were hired by
 defendant, or for any other reason, should not be doing
 such work or that they should be doing work requiring more
 intellectual application or more non-repetitive mental
 exertion or the use of more independent judgement or
 discretion." Defendant further objects to this Request to
 the extent it seeks information, the disclosure of which
 would constitute an unwarranted invasion of the affected
 person's constitutional, statutory and common-law right of
 privacy and confidentiality. Defendant also objects to
 this request to the extent that it calls for documents
 that are protected by the attorney client privilege and/or
 the work product doctrine. In addition, Defendant objects
 to this Request to the extent that it assumes, without

1 factual basis, that there is a "nature of work performed
2 by the persons similarly situated to the plaintiff."

3 Request 4: Seeks documents mentioning complaints by defendant's
4 clients that it was inappropriate to bill such clients for the work
5 performed by class members. The only complaints sought are those
6 where it was alleged, at least in part, that the nature of the work
7 (tasks) performed by the plaintiff class members were not those that
8 were appropriately billed to such clients.

9 Defendant produces no documents in response to this request and
10 makes the following objection:

11 Defendant objects to this Request on the ground that
12 it is overbroad as to time, unduly burdensome, lacks
13 foundation, and seeks information not reasonably
14 calculated to lead to the discovery of admissible
15 evidence, including because a class has not been certified
16 in this action. Defendant further objects to this request
17 on the ground that it is vague and ambiguous as to the
18 phrase "the nature of such objections being, at least in
19 part, that it was inappropriate to charge such clients for the time
20 consumed by the persons similarly situated to the
21 plaintiff performing such work because of the nature of
22 the work (tasks) performed by such persons and upon which
23 such client time billings (at least in part) were based."
24 In addition, Defendant objects to this Request to the
25 extent that it assumes, without factual basis, that "it
26 was inappropriate to charge such clients for the time
27 consumed by the persons similarly situated to the
28 plaintiff performing such work" and that there exist
"persons similarly situated to the plaintiff performing
such work."

21 Plaintiff's first set of interrogatories (Ex. "C" with
22 defendant's response at Ex. "D") requests that the defendant
23 identify a certain limited number of persons (7 per interrogatory
24 response) who have knowledge of the class members' typical work
25 assignments and the defendant's hiring criteria for such persons.
26 These requests consist of the following (there are multiple
27 interrogatories that request the same information, but about
28 different departments of the defendant's business):

Interrogatories 1 through 3 seek the identification of persons

1 with the highest level of knowledge of the types of work typically
2 performed by class members;

3 Defendant provides no response to these interrogatories but
4 makes the following objection:

5 Defendant objects to this Interrogatory on the ground
6 that it is overbroad as to scope and time and unduly
7 burdensome to the extent that it seeks the names of seven
8 individuals. Defendant further objects to this
9 Interrogatory on the ground that it is vague and ambiguous
10 as to the term "similarly situated to the plaintiff and
11 who worked [in the specified department of the
12 defendant]." Defendant is unaware of anyone who worked in
13 [the specified department of the defendant] who is
14 similarly situated to plaintiff, a Senior in International
15 Tax. In addition, Defendant objects to this Interrogatory
16 to the extent that it assumes, without factual basis, that
17 there is "work typically performed or assigned to, or
18 undertaken by" any group of persons. Defendant further
19 objects to this interrogatory to the extent that it seeks
20 information that would more properly be obtained by
21 noticing depositions under Rule 30(b)(6).

22 Interrogatory 4 seeks the identification of persons with the
23 highest level of knowledge of the types of work that were *not*, as a
24 matter of policy, to be performed by class members (presumably these
25 would be the same persons identified in response to interrogatories
26 1 through 3). Interrogatories 5 through 7 seek the identification
27 of persons with the highest level of knowledge of the defendant's
28 hiring criteria for the class members.

Defendant provides no response to these interrogatories but
makes an objection identical in substance to its objection to
interrogatories 1 through 3.

ARGUMENT

I. WHY THE REQUESTED DISCOVERY SHOULD BE PRODUCED

A. **The Court Must Allow Discovery Relevant
To Whether a Class Action Should be Certified**

In a putative class action case discovery must be allowed of facts bearing on whether class action certification is appropriate. If such relevant facts are not already known it is likely an abuse of discretion for the District Court to deny such discovery. See, Yafee v. Powers, 454 F.2d 1362, 1366 (1st Cir. 1972), cited by Kamm v. California City Development Co., 509 F.2d 205 (9th Cir. 1975). See, also, Doninger v. Pacific Northwest Bell, Inc., 564 F.2d 1304 (9th Cir. 1977).

B. **Whether Class Action Certification is Proper
In this Case Requires an Examination of the
Common Circumstances of the Putative Class**

A central issue in this case is the nature of the class members' work (i.e., was that work of a professional nature). The *similarity or common nature* of the work actually performed by the class members, and whether the class members had similar credentials or expertise that might qualify them as "professionals", significantly bears on whether this case should be certified as a class action. The circumstances of the putative plaintiffs must be sufficiently common *as a class* or it will not be possible to determine whether they *as a class* were entitled to overtime compensation (i.e., whether they did, or did not, as a class, perform "professional" work).

1 **C. The Documents Requested by Plaintiff Will**
 2 **Assist in Determining the Nature of the Work**
 3 **Actually and Commonly Performed by the Class Members**

4 **i. Defendant's Operational (Policy)**
 5 **Documents and Communications About**
 6 **The Sort of Work Performed by**
 7 **Class Members are Highly Relevant**

8 Plaintiff's document request #1 is intended to result in the
 9 production of defendant's operating documents discussing the sort of
 10 work given (or not to be given) to class members. This would
 11 include defendant's policy statements (such as a "do's and don'ts"
 12 list) given to its supervisors regarding the sort of work
 13 assignments appropriate for class members. It would also include
 14 memoranda or written suggestions or other communications from, or
 15 to, such supervisors about what types of work should, or should not,
 16 be given to the class members.

17 Defendant's promise to provide "job description documents and
 18 evaluation forms" is only marginally responsive to this request.
 19 What a job may be "described as" could well be quite different than
 20 what work the job actually entailed. The guidelines or operational
 21 statements used by the defendant's supervisors in assigning the
 22 class members' work (or communications from or to such supervisors
 23 on that subject) will tell a great deal about what sorts of work the
 24 class members were actually performing.

25 **ii. Defendant's Documents Relating to its**
 26 **Billing of Clients for the Class**
 27 **Members' Work Time (the "Utilization**
 28 **Rate and Return") are Highly Relevant**

29 Plaintiff's document request #2 is intended to result in the
 30 production of information detailing the class members' common
 31 activities (if any) that were billed to defendant's clients.
 32 Defendant would bill its clients for large amounts of time that was

1 worked by class members. This was an important source of revenue
2 for the defendant which evaluated class members' "utilization rate",
3 i.e., the proportion of their total work time that was spent on
4 activities that the defendant billed to its clients. When two class
5 members worked an equal number of hours the one with the higher
6 utilization rate was generating more revenue for the defendant. The
7 defendant was concerned about enhancing its revenue and maintaining
8 a high utilization rate for the class members. In conjunction with
9 its interest in maximizing the class member's utilization (and
10 revenue generation) it is apparent that the defendant must or may
11 have among other things:

- 12 • Had guidelines specifying what sorts of activities of
13 class members were properly characterized as
14 "billable" to clients and what sort of activities
15 should not be considered billable activities;
- 16 • Had formats or suggested characterizations that
17 plaintiff class members were to use in describing
18 either their billable or non-billable activities;
- 19 • Engaged in studies or analysis of what sort of
20 activities the class members were actually performing
21 so as to enhance its understanding of what those
22 activities were and how it could increase the
23 billable time (utilization rate) of the class
24 members;
- 25 • Engaged in studies or analysis of how it could expand
26 the amount of billable time worked by class members,
27 including by characterizing certain "non-billable"
28 activities as "billable" activities or by
transferring certain functions to class members that

1 were otherwise performed by personnel whose time was
2 not billed to defendant's clients;

- 3 • Set forth suggestions or orders to its supervisory
4 staff about making changes to class members'
5 activities and the time billing associated with such
6 activities.

7 Defendant's promise to provide a document that "explains the
8 utilization rate" is not responsive to this request. The relevancy
9 of this discovery is not limited to the utilization rate itself
10 (either how it is determined or what a class member's utilization
11 rate was) but what it will explain about the *actual activities of*
12 *the class members.*

13 **iii. Defendants' Documents Detailing Complaints**
14 **About the Rote, Menial or "Non-Billable"**
15 **Nature of the Work Performed by**
 Class Members are Highly Relevant

16 Plaintiff's document requests #3 and #4 are intended to result
17 in the production of complaints by class members about their menial
18 or low level (not intellectually challenging) work activities and
19 complaints by defendant's clients that the billed time of class
20 members was not properly billable owing to the nature of the work
21 performed. Defendant is refusing to produce any documents in
22 response to these requests.

23 The requested documents will furnish information about the
24 common nature (if any) of the work performed by class members. The
25 presence of repeated, or extensive, complaints that class members
26 were performing menial or not properly "billable" work may well
27 support a conclusion that such sorts of work were common among the
28 class members.

**D. Defendant's Objections to Producing
The Requested Documents are Improper**

Defendant's unfounded objections to producing the documents requested by the plaintiff are:

- "Overbroad as to time and scope" - These documents are sought for the relevant class claims period, their relevancy is clear and this objection has no basis.
- "Unduly burdensome" - This claim is completely unsubstantiated. Defendant has produced *no substantially responsive documents whatsoever*. Nor has it provided any information on what effort it has made to locate the documents that are being sought. As the party resisting the production of relevant discovery it is defendant's heavy burden to establish that such production should be excused for this reason. See, *Blakenship v. The Hearst Corporation*, 519 F.2d 418, 429 (1975), *In re Syncor ERISA Litig.*, 229 F.R.D. 636, 643 (N.D. Cal. 2005), and numerous other cases. See, also, *Cobb v. Danzig*, 190 F.R.D. 564, 566 (S.D. Cal. 1999) (Even if "good cause" is shown in compliance with Blakenship for not producing the discovery at issue the Court must still "balance the competing interests of allowing discovery and the relative burdens to the parties.")
- "Lack of foundation and premature, including because a class has not been certified" - This claim is specious. The materials are sought because they are relevant to class certification. That those

1 materials may also be relevant to the merits of the
2 plaintiff's case are irrelevant and the materials
3 must be produced because of their manifest relevancy
4 to the class certification issue. See, Babbit v.
5 Albertson's, Inc., No. C-92-1883 SBA (PJH), 1992,
6 U.S. Dist. LEXIS 19091 at *7 (N.D. Cal. Nov. 30,
7 1992) citing Harriss v. Pan American World Airways,
8 Inc., 74 F.R.D. 24, 36 (N.D.Cal. 1977), holding that
9 certain discovery will often be relevant to both
10 class certification issues and the ultimate merits of
11 the parties' claims.

- 12 • "Attorney client privilege and/or work product
13 doctrine" - These claims are totally unsubstantiated.
14 No privilege log is provided. On their face these
15 claims are clearly inappropriate, the requested
16 materials are operational documents (policy
17 guidelines or communications, operational studies
18 done by defendant to assist in enhancing its business
19 revenue and so forth). No request is made for
20 counsel/client restricted communications or
21 documents prepared for litigation.
- 22 • "Vague and ambiguous" - There is nothing vague or
23 ambiguous about any of the plaintiff's requests. The
24 materials sought in the requests are clearly stated,
25 and certain terms ("utilization rate and return" and
26 "persons similarly situated to the plaintiff") are
27 explicitly, and in detail, defined in the requests.
- 28 • Request #3 is improper because it assumes "there is a
nature of work performed by persons similarly

1 situated to the plaintiff" - This objection is
2 nonsensical. There is, of course, a "nature" (i.e.,
3 kind) of work performed by such persons. Whether
4 that "nature" (kind) of work is common, or very
5 different, among all such persons is not assumed.
6 All that is sought is information on the "nature" of
7 the work (kind of work) *actually performed by such*
8 *persons*, no assumption is made that such work was
9 "common in nature" among such persons.

- 10 • Request #4 is improper because it assumes "it was
11 inappropriate to charge such clients for the time
12 consumed by the persons similarly situated to the
13 plaintiff performing such work" and it assumes there
14 exist "persons similarly situated to the plaintiff
15 performing such work." No such assumptions are made.
16 This request only seeks the production of *complaints*
17 making such allegations. It neither assumes such
18 complaints are valid nor asks the defendant to
19 concede their correctness.
- 20 • Request #3 is improper because it seeks the
21 production of documents that would constitute an
22 "unwarranted invasion of the affected person's
23 privacy" - Presumably defendant is referring to the
24 supposed privacy interest of the class member making
25 a complaint that their work was of a rote or menial
26 nature. This objection is baseless and all documents
27 produced can be designated as confidential by the
28 defendant (See Docket #35) which would prevent their
 disclosure to anyone.

1 **E. The Interrogatory Requests**
2 **Made by Plaintiff are Proper**

3 Plaintiff's interrogatories seek the identification of those
4 persons the defendant believes are the most knowledgeable witnesses
5 on A) The sort of work activities performed by (and not performed
6 by) class members and B) The defendant's hiring qualifications for
7 class members. The relevance of these witnesses' knowledge to the
8 class certification issues is twofold. They can give relevant
9 testimony on the commonality or lack thereof of the class members'
10 work. They are also the most knowledgeable persons regarding the
11 defendant's hiring criteria. This is relevant to class
12 certification as the common (or disparate) nature of the class
13 members' qualifications (such qualifications bearing on the
14 "professional worker" exemption) may favor (or disfavor) the class
15 certification of this case.

16 Plaintiff seeks to have the defendant make some identification
17 of the persons it believes have the most knowledge of theses
18 relevant issues. Such identification will allow the plaintiff to
19 conduct depositions accordingly and also prevent any unfair surprise
20 by the defendant later introducing testimony from witnesses who it
21 claims are more, or equally, knowledgeable about these issues.

22 **F. Defendant's Objections to Providing the**
23 **Requested Interrogatory Responses are Improper**

24 Defendant's unfounded objections to the plaintiff's
25 interrogatories essentially mirror their baseless document
26 production objections and also raise the following baseless
objections:

- 27 • The defendant is "unaware of anyone similarly
28 situated to the plaintiff a Senior in International
 Tax" presumably because defendant also finds that the

1 term "similarly situated to the plaintiff" is "vague
2 and ambiguous." There is no basis for this
3 objection. The persons "similarly situated" for
4 which information is sought *are precisely defined in*
5 *the plaintiff's request.* (Ex. "C", ¶ 12). That
6 definition is quite detailed and describes such
7 persons by their salary compensation status and the
8 defendant's own classification of such persons by
9 particular job titles. There is nothing vague or
10 ambiguous about who the "similarly situated" persons
11 are for which information is sought.

- 12 • There is no factual basis to establish the existence
13 of any "work typically performed" by class members.
14 The defendant needs to identify those persons who
15 have knowledge of *whatever work* was "typically"
16 (i.e., was performed most frequently) by class
17 members. If that sort of work was uncommon, and
18 diverse in nature, then such persons will know that
19 the "typical" work performed consisted of many
20 different things (i.e., "typical work" does not
21 necessarily mean the same sorts of work)
- 22 • The information may be more properly obtained by
23 noticing depositions under Rule 30(b)(6). This is
24 incorrect, as the only information sought is the
25 *identification of the most knowledgeable witnesses.*
26 That is the explicit purpose of interrogatories.
27 Plaintiff should not be required to conduct a
28 deposition of the person(s) with the "most knowledge
about who defendant believes are the most

1 knowledgeable witnesses" simply to obtain the
2 identity of such witnesses.

3 • "Unduly burdensome to the extent it seeks the names
4 of seven individuals" - The plaintiff's requests
5 specify that defendant can identify *any* seven persons
6 with equal levels of knowledge as long as it believes
7 such persons each have the highest level of
8 responsive knowledge. If the defendant does not
9 believe that even seven persons have any responsive
10 knowledge it must, of course, only identify the
11 number of persons (one, two, three, etc.) that it
12 believes have such knowledge.

13 **II. COMPLIANCE WITH LOCAL COURT RULES 37-2 AND 37-1(A)**

14 Pursuant to Local Rule 37-2 the moving party who seeks to
15 compel discovery must detail both the reason why it believes the
16 discovery should be compelled and how the proportionality and other
17 requirements of FRCP Rule 26(b)(2) are satisfied. Plaintiff submits
18 that it has done so. The discovery sought is highly germane to
19 determining the common nature (or lack thereof) of the class
20 members' work and their qualifications, important issues bearing on
21 whether class certification should be granted. There are no better
22 sources from which to obtain such information and the information is
23 not duplicative or cumulative of any other discovery in this case.
24 The burden or expense of producing the information is slight.

25 Pursuant to Local Rule 37-1(a) counsel must make a good faith
26 effort to confer and resolve discovery issues prior to making a
27 motion to compel. Compliance with that rule is documented in Ex.
28 "E".

CONCLUSION

For all of the foregoing reasons, the Court should grant the plaintiff's motion in full and enter the proposed Order submitted by plaintiff's counsel.

Dated this 24th day of April, 2007

By: _____/s/
Leon Greenberg, Esq.
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7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500
Attorney for Plaintiff

EXHIBIT "A"

EXHIBIT "A"

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4 Attorneys for Plaintiffs

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
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7 DAVID HO, on behalf of himself
and all others similarly situated
8 and on behalf of the general
public and DOES #1-20,

Case No. 05-04867-HRL

9 Plaintiffs,

10
11 -against-

12 ERNST & YOUNG LLP

13 Defendants.

14 -----X
15 PLAINTIFF'S THIRD REQUEST FOR THE PRODUCTION OF DOCUMENTS

16 Pursuant to the applicable provisions of the Federal Rules of
17 Civil Procedure § 34 and the Local Rules of this Court plaintiffs
18 request that the defendants produce the following items within 30
19 days of the service of this request or within such other time frame
20 allowed by said Rule at the Law Office of Leon Greenberg,
21 Professional Corporation, attorney for plaintiff, at 633 South 4th
22 Street, Suite 9, Las Vegas, Nevada, 89101, for inspection and
23 copying. This request seeks in the first instance, in lieu of
24 producing such items for inspection and copying, the production of
25 copies of such items which such defendants can produce and/or have
26 delivered on or before such date. If such defendants wish to
27 produce the original items for production and copying they need to
28 contact plaintiff's counsel to confirm their appearance on such date
with such items and/or to arrange another mutually convenient date

1 for such production.

2 **INSTRUCTIONS AND DEFINITIONS**

3 1. These requests should be considered to be continuing, and
4 supplemental answers should be served as further information becomes
5 available pursuant to Rule 26(e) of the Federal Rules of Civil
6 Procedure.

7 2. In complying with this Request for Production of
8 Documents, you are required to produce all documents specified
9 herein that are in your possession, custody or control or which are
10 otherwise available to you.

11 3. If any request herein cannot be complied with in full, it
12 shall be complied with to the extent possible with an explanation as
13 to why full compliance is not possible.

14 4. With respect to each document or communication that is
15 responsive but is withheld, the following additional information
16 shall be provided:

- 17 a) the grounds asserted supporting the failure to produce;
- 18 b) the factual basis for a claim of privilege and/or
19 confidentiality;
- 20 c) the subject matter, date, author, recipient, addressee
21 and number of pages;
- 22 d) the subject matter, date, parties and medium for each
23 communication;
- 24 e) the current or last known location of the document;
- 25 and
- 26 f) the current or last known person retaining the
27 document.

28 5. If a requested document cannot be located, then identify
such document by setting forth:

- 1 a) the last known person retaining the document;
- 2 b) whether the document is lost and the efforts made to
- 3 locate the lost document;
- 4 c) whether the document was destroyed or discarded and
- 5 the date, manner, reason and person responsible for such action; and
- 6 d) a statement describing the document, including a
- 7 summary of its contents, the author and the persons to whom it was
- 8 sent or shown.

9 6. If any documents which contained responsive information no
10 longer exist, identify each by setting forth:

- 11 a) all the information contained in the document;
- 12 b) the type of document (e.g., letters or memoranda);
- 13 c) the time period when the documents were maintained;
- 14 d) all persons who have or had knowledge of the contents
- 15 of the documents;
- 16 e) the circumstances of the loss or destruction; and
- 17 f) all persons who have knowledge of the loss or
- 18 destruction.

19 7. If any identified document is subject to destruction under
20 any document retention or destruction program, the document(s)
21 should be exempted from any scheduled destruction until the
22 conclusion of this lawsuit or unless otherwise permitted by the
23 Court.

24 8. Separate responses should be given to each document
25 request. If a document is responsive to more than one request,
26 additional copies are not needed, but the subsequent responses
27 should identify the request for which the document was produced.

28 9. The source or sources of each document produced shall be
specifically identified.

1 10. Please produce clear and legible copies of the originals
2 of all documents requested, as well as any and all copies of such
3 original documents that bear any mark or notation not present on the
4 original.

5 11. If in answering these requests, you claim any ambiguity
6 in interpreting either the request or a definition or instruction
7 applicable thereto, such claim shall not be utilized by you as a
8 basis for refusing to respond, but there shall be set forth as part
9 of the response the language deemed to be ambiguous and the
10 interpretation chosen or used in responding to the request.

11 12. Unless otherwise specified, the time period covered by
12 these demands is January 1, 2001 to the present.

13 13. The plural and singular tense shall be deemed to be used
14 throughout these demands and definitions and responses shall be made
15 as if demands were made in both the plural and singular tense
16 regardless of how such demands are actually worded herein.

17 14. The conjunctive and disjunctive tense ("and/or") is to be
18 deemed used throughout these demands and definitions and defendants
19 should respond to all demands as if they are made in both the
20 conjunctive and disjunctive tense except in respect to those demands
21 which clearly qualify a demand by using the conjunctive tense to
22 narrow the scope of the material sought.

23 15. The term "Defendants" refers to all defendants represented
24 by the law office(s) receiving this request.

25 16. In the event that any documents requested for production
26 herein exist in electronic (be it database, word processing, or
27 other computer software) form, or were generated from such
28 electronic form, please specify the electronic form for each
document produced.

1 17. In the event the documents to be produced in response to
2 these requests exceed 500 pages, and the documents to be produced,
3 or some of them, exist in electronic (be it database, word
4 processing, or other computer software) form, or were generated from
5 such electronic form, the production of such documents in their
6 electronic form (and not in paper form) is requested and please
7 contact plaintiff's counsel to make arrangements for the production
8 of such documents in electronic form.

9 18. If a request seeks documents containing information that
10 has not been compiled or organized by the defendants in the exact
11 form requested, but the information requested exists in an
12 electronic form from which such document(s) can be produced, a
13 complete copy of such electronic form (database) can be produced in
14 lieu of the specifically requested documents.

15 19. Persons "similarly situated" to the plaintiff, for the
16 purpose of these requests, means:

17 a) Persons employed by defendant in the State of
18 California at anytime during the four years preceding the
19 commencement of this action to the date of the defendant's response
20 to these requests and who were paid on a salary basis (the term
21 "salary basis" means they were not paid a fixed amount of
22 compensation for each hour or portion thereof worked) and;

23 b) Were classified or denominated as working in non-
24 management positions described by "Department" or "Unit" or other
25 office (such being Tax, Audit or another unit, department, or
26 office) and "Staff 1" or "Staff 2" or "Staff 3" or "Senior 1" or
27 "Senior 2" or "Senior 3" or "Financial Management Associates"

28 20. "Client time billing" for the purpose of these requests
means the practice of billing defendant's clients for the time

1 consumed performing particular tasks by persons similarly situated
2 to the plaintiff.

3 21. "Materials on the utilization rate and return" for the
4 purpose of these requests means:

5 All materials that deal with any aspect of the revenue
6 either generated or that was contemplated or proposed to be
7 generated by charging clients of the defendant for the time spent by
8 persons similarly situated to the plaintiff on particular tasks
9 (i.e., all materials relating to or dealing with "client time
10 billing"). This includes, but is not limited to, all materials
11 detailing the utilization percentage (the percent of their total
12 work time that was billed to defendant's clients) of such persons;
13 all materials detailing the total amount of work time of each and
14 all such persons billed by the defendant to the defendant's clients;
15 all materials setting forth either suggested or possible or
16 contemplated or implemented policies or practices to increase the
17 amount of time billed to defendant's clients by such persons; all
18 materials setting forth what tasks of such persons were or should be
19 properly billed to the defendant's clients; all materials setting
20 forth what tasks of such persons were not billed or should not be
21 billed to defendant's clients; all materials setting forth either
22 suggested or mandatory or preferred ways of characterizing or
23 describing the work performed by such persons that was billed to
24 defendant's clients; all materials discussing whether certain tasks
25 performed by defendant's employees who were not similarly situated
26 to the plaintiff, and whose time was not billed to the defendant's
27 clients, either could or should or should not be assigned to the
28 persons similarly situated to the plaintiff and the time spent by
such persons on such tasks should be billed, or not billed, to the

1 defendant's clients; all materials setting forth or identifying or
2 proposing additional tasks that could be the subject of client time
3 billing by persons similarly situated to the plaintiff; all
4 materials setting forth required, suggested, preferred or desired
5 minimum levels (however expressed) of time that such persons
6 similarly situated to the plaintiff should bill to defendant's
7 clients; all instructions, suggestions or other communications to
8 the persons responsible for managing or giving work assignments to
9 the persons similarly situated to the plaintiff on what minimum
10 levels of client time billing should be maintained by the persons
11 similarly situated to the plaintiff and/or how to increase the
12 amount of client time billing by such persons and/or any statements
13 regarding such persons similarly situated to the plaintiff failing
14 to generate a sufficient level of client time billing.

15 DOCUMENTS TO BE PRODUCED

16 1. Produce all documents that were used by the defendant that
17 set forth (either as actual operating practices or suggested
18 guidelines or practices) the sort of work duties that either were,
19 or should have been, or were not to be, or should not have been,
20 performed by persons similarly situated to the plaintiff. This
21 request includes, but is not limited to, all memorandums, policy
22 statements, instructions, or other documents or communications
23 mentioning such work duties that were from, given to, or relied
24 upon, by those employees of the defendant who were responsible for
25 managing and/or giving work assignments to the persons similarly
26 situated to the plaintiff.

27
28 2. Produce copies of all "materials on the utilization rate
and return."

1 3. Provide copies of all documents mentioning complaints made
2 to the defendant that the nature of the work performed by the
3 persons similarly situated to the plaintiff was inappropriate and of
4 a too menial or rote or low level basis, or was otherwise
5 inappropriate, because such persons, based upon their education
6 and/or experience and/or training and/or the representations made by
7 defendant to such persons when they were hired by defendant, or for
8 any other reason, should not be doing such work or that they should
9 be doing work requiring more intellectual application or more non-
10 repetitive mental exertion or the use of more independent judgement
11 or discretion.

12
13 4. Produce copies of all documents setting forth instances
14 where defendant's clients objected to client time billings, the
15 nature of such objections being, at least in part, that it was
16 inappropriate to charge such clients for the time consumed by the
17 persons similarly situated to the plaintiff performing such work
18 because of the nature of the work (tasks) performed by such persons
19 and upon which such client time billings (at least in part) were
20 based.

21 Dated: Clark County, Nevada
22 March 1, 2007

23 Respectfully submitted,

24 /s/
25 Leon Greenberg, Esq.
26 LEON GREENBERG PROFESSIONAL CORPORATION
27 THIERMAN LAW FIRM
28 Attorney for the Plaintiffs
 633 South 4th Street - Suite 9
 Las Vegas, Nevada 89101
 (702) 383-6085
 Nevada Bar Number: 8094

EXHIBIT "B"

1 CATHERINE A. CONWAY (SBN 98366)
2 GREGORY W. KNOPP (SBN 237615)
3 S. ADAM SPIEWAK (SBN 230872)
4 **AKIN GUMP STRAUSS HAUER & FELD LLP**
5 2029 Century Park East, Suite 2400
6 Los Angeles, California 90067-3012
7 Telephone: 310-229-1000
8 Facsimile: 310-229-1001
9 cconway@akingump.com
10 gknopp@akingump.com
11 aspiewak@akingump.com

12 Attorneys for Defendant, ERNST & YOUNG LLP

13 UNITED STATES DISTRICT COURT
14 NORTHERN DISTRICT OF CALIFORNIA
15 SAN JOSE DIVISION

16 DAVID HO, on behalf of himself and others
17 similarly situated and on behalf of the
18 general public and DOES 1-20

19 Plaintiff,

20 v.

21 ERNST & YOUNG LLP

22 Defendant.

Case No. CV 05-04867 JF

[Assigned for all purposes to the Honorable
Jeremy Fogel, Department 3]

**DEFENDANT ERNST & YOUNG LLP'S
RESPONSES TO PLAINTIFF'S
REQUESTS FOR PRODUCTION OF
DOCUMENTS (SET THREE)**

23 PROPOUNDING PARTY: Plaintiff, DAVID HO

24 RESPONDING PARTY: Defendant, ERNST & YOUNG LLP

25 SET NO.: THREE

1 **TO PLAINTIFF AND HIS ATTORNEYS OF RECORD:**

2 Pursuant to Federal Rule of Civil Procedure 34, defendant Ernst & Young LLP ("Defendant" or
3 "E&Y"), hereby objects and responds as follows to the Request for Production of Documents Set
4 Three propounded by plaintiff David Ho ("Plaintiff").

5 **I. PRELIMINARY STATEMENT**

6 These responses reflect only the current status of Defendant's knowledge, understanding and
7 belief respecting the matters about which inquiry has been made. Discovery in this action is
8 continuing and, consequently, Defendant may not have yet identified all information responsive to this
9 Request for Production of Documents ("Request"). As discovery in this action proceeds, Defendant
10 anticipates that it may discover additional or different information or documents. Without in any way
11 obligating itself to do so, Defendant reserves the right to amend, modify, supplement, clarify or further
12 explain these responses and objections at any time in the future.

13 Furthermore, these responses are without prejudice to the right of Defendant to use or rely on at
14 any time, any subsequently discovered information, or information omitted from these responses as a
15 result of mistake, error, oversight or inadvertence. Defendant further reserves the right to provide
16 additional information and evidence at any time, and to object on appropriate grounds to the
17 introduction of any portion of these responses into evidence.

18 These responses are made solely for the purpose of and in relation to discovery conducted in
19 this case. Each response is given subject to all appropriate objections (including but not limited to
20 objections concerning competency, privacy, relevancy, specificity, overbreadth, undue burden,
21 materiality, confidential proprietary or trade secret material, or admissibility), which would require the
22 exclusion of any response contained herein. All such objections therefore are reserved and may be
23 interposed at trial.

24 Defendant responds to these Requests as it interprets and understands them. If Plaintiff
25 subsequently asserts an interpretation of any Request that differs from Defendant's understanding,
26 Defendant reserves its right to supplement its objections and/or responses herein.

II. GENERAL OBJECTIONS

The following general objections apply to each Request in Plaintiff's Request for Production of Documents Set Three, in addition to any objections that are addressed to particular Requests or subparts of particular Requests:

Defendant objects to the instructions and definitions set forth in Plaintiff's Requests to the extent they purport to alter Defendant's obligations under Federal Rule of Civil Procedure 34.

Defendant objects to each Request to the extent that it imposes any requirements beyond those of the Federal Rules of Civil Procedure. Such Requests are unduly burdensome and exceed the scope of permissible discovery. Defendant will comply with the Federal Rules of Civil Procedure.

Defendant objects to each Request to the extent that it requires disclosure of matters and communications that are protected by the attorney-client privilege, work product doctrine, third parties' right to privacy or any other applicable privilege or immunity. To the extent a Request can be construed to seek privileged or exempt information, Defendant objects and will produce only non-privileged, non-exempt material.

Defendant objects to each Request to the extent that it requires Defendant to provide information and/or documents not presently in its possession, custody or control or to make inquiries of persons or other entities not affiliated with it.

Defendant's responses herein are based upon its understanding of the Requests propounded to it and are based upon and necessarily limited by the information in existence, presently recollected, and presently discovered during the course of preparing these responses. Defendant reserves the right to amend or supplement its responses in the event that its understanding and/or interpretation of any Request is different from that intended by Plaintiff, or in the event that additional information or documents are discovered.

REQUEST FOR PRODUCTION NO. 1:

Produce all documents that were used by the defendant that set forth (either as actual operating practices or suggested guidelines or practices) the sort of work duties that either were, or should have been, or were not to be, or should not have been, performed by persons similarly situated to the plaintiff. This request includes, but is not limited to, all memorandums [sic], policy statements,

instructions, or other documents or communications mentioning such work duties that were from, given to, or relied upon, by those employees of the defendant who were responsible for managing and/or giving work assignments to the persons similarly situated to the plaintiff.

RESPONSE TO REQUEST FOR PRODUCTION NO. 1:

Defendant objects to this Request on the ground that it is overbroad as to time and scope, unduly burdensome, and premature, including because a class has not been certified in this action. Defendant also objects to this Request to the extent that it calls for documents that are protected by attorney-client privilege and/or the work product doctrine. Defendant further objects to this Request on the ground that it is duplicative of Plaintiff's Request for Production No. 2 propounded in Plaintiff's Request For Production Set One. Defendant has already produced responsive documents that describe Plaintiff's job duties. Defendant further objects to this Request on the ground that it is vague and ambiguous as to the terms "sort of work duties that either were, or should have been, or were not to be, or should not have been, performed by persons similarly situated to the plaintiff" and "work duties that were from, given to, or relied upon, by those employees of the defendant who were responsible for managing and/or giving work assignments to the persons similarly situated to the plaintiff."

Subject to and without waiving the foregoing objections, Defendant responds that it will produce job description documents and evaluation forms that pertain to staffs 1 and 2 and seniors 1 and 2.

REQUEST FOR PRODUCTION NO. 2:

Produce copies of all "materials on the utilization rate and return."

RESPONSE TO REQUEST FOR PRODUCTION NO. 2:

Defendant objects to this Request on the ground that it is vague and ambiguous as to the term "materials on the utilization rate and return." Defendant further objects to this Request on the ground that it is overbroad. Defendant also objects to this Request to the extent that it calls for documents that are protected by attorney-client privilege and/or the work product doctrine.

Subject to and without waiving the foregoing objections, Defendant responds that it will produce a non-privileged responsive document that explains the utilization rate.

1 **REQUEST FOR PRODUCTION NO. 3:**

2 Provide copies of all documents mentioning complaints made to the defendant that the nature
3 of the work performed by the persons similarly situated to the plaintiff was inappropriate and of a too
4 menial or rote or low level basis, or was otherwise inappropriate, because such persons, based upon
5 their education and/or experience and/or training and/or the representations made by defendant to such
6 persons when they were hired by defendant, or for any other reason, should not be doing such work or
7 that they should be doing work requiring more intellectual application or more non-repetitive mental
8 exertion or the use of more independent judgement [sic] or discretion.

9 **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

10 Defendant objects to this Request on the ground that it is overbroad as to time, unduly
11 burdensome, lacks foundation, and is premature, including because a class has not been certified in this
12 action. Defendant further objects to this Request on the ground that it is compound and vague and
13 ambiguous as to the phrase "the nature of the work performed by the persons similarly situated to the
14 plaintiff was inappropriate and of a too menial or rote or low level basis, or was otherwise
15 inappropriate, because such persons, based upon their education and/or experience and/or training
16 and/or the representations made by defendant to such persons when they were hired by defendant, or
17 for any other reason, should not be doing such work or that they should be doing work requiring more
18 intellectual application or more non-repetitive mental exertion or the use of more independent
19 judgment or discretion." Defendant further objects to this Request to the extent it seeks information,
20 the disclosure of which would constitute an unwarranted invasion of the affected person's
21 constitutional, statutory, and common-law right of privacy and confidentiality. Defendant also objects
22 to this Request to the extent that it calls for documents that are protected by attorney-client privilege
23 and/or the work product doctrine. In addition, Defendant objects to this Request to the extent that it
24 assumes, without factual basis, that there is a "nature of the work performed by the persons similarly
25 situated to the plaintiff."

26 **REQUEST FOR PRODUCTION NO. 4:**

27 Produce copies of all documents setting forth instances where defendant's clients objected to
28 client time billings, the nature of such objections being, at least in part, that it was inappropriate to

1 charge such clients for the time consumed by the persons similarly situated to the plaintiff performing
2 such work because of the nature of the work (tasks) performed by such persons and upon which such
3 client time billings (at least in part) were based.

4 **RESPONSE TO SPECIAL INTERROGATORY NO. 4:**

5 Defendant objects to this Request on the ground that it is overbroad as to time, unduly
6 burdensome, lacks foundation, and seeks information not reasonably calculated to lead to the discovery
7 of admissible evidence, including because a class has not been certified in this action. Defendant
8 further objects to this Request on the ground that it is vague and ambiguous as to the phrase "the nature
9 of such objections being, at least in part, that it was inappropriate to charge such clients for the time
10 consumed by the persons similarly situated to the plaintiff performing such work because of the nature
11 of the work (tasks) performed by such persons and upon which such client time billings (at least in
12 part) were based." In addition, Defendant objects to this Request to the extent that it assumes, without
13 factual basis, that "it was inappropriate to charge such clients for the time consumed by the persons
14 similarly situated to the plaintiff performing such work" and that there exist "persons similarly situated
15 to the plaintiff performing such work."

16
17 Dated: April 21, 2007

AKIN GUMP STRAUSS HAUER & FELD LLP
Catherine A. Conway
Gregory W. Knopp
S. Adam Spiewak

18
19
20
21 By 

Gregory W. Knopp
Attorneys for Defendant Ernst & Young LLP

PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067.

On April 2, 2007 I served the foregoing document(s) described as:

**DEFENDANT ERNST & YOUNG LLP'S RESPONSES TO
PLAINTIFF'S REQUESTS FOR PRODUCTION OF DOCUMENTS
(SET THREE)**

on the interested party(ies) below, using the following means:

Mark R. Thierman, Esq.
THIERMAN LAW FIRM
7287 Lakeside Drive
Reno, Nevada 89511
Telephone: 775.284.1500
Facsimile: 775.703.5027

Leon Greenberg, Esq.
Attorney at Law
633 South 4th Street, Suite 9
Las Vegas, Nevada 89101
Telephone: 702.383.6085
Facsimile: 702.385.1827

☒ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 2, 2007 at Los Angeles, California.

Sharon Cluff

[Print Name of Person Executing Proof]

[Signature]

EXHIBIT "C"

1 Mark R. Thierman, SB# 72913
Leon Greenberg, SB# 226253
2 THIERMAN LAW FIRM
7287 Lakeside Drive
3 Reno, NV 89511
Telephone (775) 284-1500

4 Attorneys for Plaintiffs

5 UNITED STATES DISTRICT COURT
6 NORTHERN DISTRICT OF CALIFORNIA
-----X

7 DAVID HO, on behalf of himself
and all others similarly situated
8 and on behalf of the general
public and DOES #1-20,

Case No. 05-04867-HRL

9 Plaintiffs,

10
11 -against-

12 ERNST & YOUNG LLP

13 Defendants.

14 -----X

15 **FIRST INTERROGATORIES OF THE PLAINTIFFS**
16 **TO THE DEFENDANT**

17 Pursuant to Rule 33 of the Federal Rules of Civil Procedure
18 plaintiffs request that each defendant furnish sworn, separate and
19 complete written answers to each interrogatory set forth herein to
20 the Law Office of Leon Greenberg, Professional Corporation, attorney
21 for plaintiffs, at 633 South 4th Street, Suite 9, Las Vegas, Nevada,
22 89101, which answers, according to Rule 33 of the Federal Rules of
23 Civil Procedure, should be made within thirty (30) days of the
service of this Demand.

24 These interrogatories shall be deemed to continue beyond the
25 date when the defendants serve their responses to the same, and
26 defendants shall supplement their answers if further knowledge,
27 information, or documents are acquired by the defendants, their
28 agents, representatives or attorneys subsequent to the date of the
original response.

DEFINITIONS AND INSTRUCTION

1
2 1. If any request is deemed to call for the production
3 privileged information provide the following information:

- 4 a. the reason for withholding the information;
5 b. a statement of the basis for the claim of
6 privilege, work product or other ground of non-disclosure

7 2. If you contend that it would be unreasonably burdensome to
8 obtain and provide any of the information called for in response to
9 any of these requests, then in response to the appropriate request:

10 a. produce and set forth all such information as is
11 available to you without undertaking what you contend to be an
12 unreasonable burden;

13 b. describe with particularity the efforts made by
14 you or on your behalf to secure such information including, without
15 limitation, identification of persons consulted, description of
16 files, records, and documents reviewed and identification of each
17 person who participated in the gathering of such information with
18 specification of the amount of time spent and nature of work done by
19 each person; and

20 c. state with particularity the ground on which you
21 contend that additional efforts to obtain such information would be
22 unreasonably burdensome.

23 3. These requests should be considered to be continuing, and
24 supplemental answers should be served as further information becomes
25 available pursuant to Rule 26(e) of the Federal Rules of Civil
26 Procedure.

27 4. If any request herein cannot be complied with in full, it
28 shall be complied with to the extent possible with an explanation as
to why full compliance is not possible.

1 5. With respect to information that is responsive but is
2 withheld, the following additional information shall be provided:

3 a) the grounds asserted supporting the failure to produce;
4 b) the factual basis for a claim of privilege and/or
5 confidentiality;

6 6. The source or sources of the information provided in each
7 interrogatory response shall be specifically identified.

8 7. If in answering these requests, you claim any ambiguity in
9 interpreting either the request or a definition or instruction
10 applicable thereto, such claim shall not be utilized by you as a
11 basis for refusing to respond, but there shall be set forth as part
12 of the response the language deemed to be ambiguous and the
13 interpretation chosen or used in responding to the request.

14 8. Unless otherwise specified, the time period covered by
15 these demands is September 1, 2001 to the present.

16 9. The plural and singular tense shall be deemed to be used
17 throughout these demands and definitions and responses shall be made
18 as if demands were made in both the plural and singular tense
19 regardless of how such demands are actually worded herein.

20 10. The conjunctive and disjunctive tense ("and/or") is to be
21 deemed used throughout these demands and definitions and defendants
22 should respond to all demands as if they are made in both the
23 conjunctive and disjunctive tense except in respect to those demands
24 which clearly qualify a demand by using the conjunctive tense to
25 narrow the scope of the material sought.

26 11. The term "Defendants" refers to all defendants represented
27 by the law office(s) receiving this request.

28 12. Persons "similarly situated" to the plaintiff, for the
purpose of these requests, means:

1 a) Persons employed by defendant in the State of
2 California at anytime during the four years preceding the
3 commencement of this action to the date of the defendant's response
4 to these requests and who were paid on a salary basis (the term
5 "salary basis" means they were not paid a fixed amount of
6 compensation for each hour or portion thereof worked) and;

7 b) Were classified or denominated as working in non-
8 management positions and/or as "client serving professionals" and
9 described by "Department" or "Unit" or other office (such being Tax,
10 Audit or another unit, department, or office) and "Staff 1" or
11 "Staff 2" or "Staff 3" or "Senior 1" or "Senior 2" or "Senior 3" or
12 "Financial Management Associates"

13
14 INTERROGATORIES

15
16 INTERROGATORY NO. 1. Identify the 7 persons that defendant believes
17 have the most knowledge of the work typically performed, or assigned
18 to, or undertaken by most of the persons who are (or were) similarly
19 situated to the plaintiff and who worked in the defendant's
20 Assurance and Advisory Business Services practice group. If any of
21 those persons are believed to have more knowledge than others
22 specify the persons with the greater knowledge, if all such persons
23 are believed to have equal knowledge so state. In the event that
24 defendant believes more than 7 persons have such a level of
25 knowledge the defendant shall identify any such 7 persons with such
26 level of knowledge who are still in the employ of the defendant and
27 7 such persons with such level of knowledge who are no longer in the
28 employ of the defendant (if there are any such persons no longer in
the employ of the defendant, and for all such persons no longer in

1 the employ of the defendant the last known address of such persons
2 shall be furnished).

3 ANSWER:

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9 INTERROGATORY NO. 2. Identify the 7 persons that defendant believes
10 have the most knowledge of the work typically performed, or assigned
11 to, or undertaken by most of the persons who are (or were) similarly
12 situated to the plaintiff and who worked in neither the defendant's
13 Assurance and Advisory Business Services practice group or Tax
14 Services practice group. If any of those persons are believed to
15 have more knowledge than others specify the persons with the greater
16 knowledge, if all such persons are believed to have equal knowledge
17 so state. In the event that defendant believes more than 7 persons
18 have such a level of knowledge the defendant shall identify any such
19 7 persons with such level of knowledge who are still in the employ
20 of the defendant and 7 such persons with such level of knowledge who
21 are no longer in the employ of the defendant (if there are any such
22 persons no longer in the employ of the defendant, and for all such
23 persons no longer in the employ of the defendant the last known
24 address of such persons shall be furnished).

25 ANSWER:

1 INTERROGATORY NO. 3. Identify the 7 persons that defendant believes
2 have the most knowledge of the work typically performed, or assigned
3 to, or undertaken by most of the persons who are (or were) similarly
4 situated to the plaintiff and who worked in the defendant's Tax
5 Services practice group. If any of those persons are believed to
6 have more knowledge than others specify the persons with the greater
7 knowledge, if all such persons are believed to have equal knowledge
8 so state. In the event that defendant believes more than 7 persons
9 have such a level of knowledge the defendant shall identify any such
10 7 persons with such level of knowledge who are still in the employ
11 of the defendant and 7 such persons with such level of knowledge who
12 are no longer in the employ of the defendant (if there are any such
13 persons no longer in the employ of the defendant, and for all such
14 persons no longer in the employ of the defendant the last known
15 address of such persons shall be furnished).

16 ANSWER:
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24 INTERROGATORY NO. 4. Identify the 7 persons that defendant believes
25 have the most knowledge of the tasks, duties, responsibilities, and
26 work that the persons who are (or were) similarly situated to the
27 plaintiff were *not* to perform or be assigned (such limitation(s)
28 being imposed by the defendant as a matter of policy). If any of
those persons are believed to have more knowledge than others

1 specify the persons with the greater knowledge, if all such persons
2 are believed to have equal knowledge so state. In the event that
3 defendant believes more than 7 persons have such a level of
4 knowledge the defendant shall identify any such 7 persons with such
5 level of knowledge who are still in the employ of the defendant and
6 7 such persons with such level of knowledge who are no longer in the
7 employ of the defendant (if there are any such persons no longer in
8 the employ of the defendant, and for all such persons no longer in
9 the employ of the defendant the last known address of such persons
10 shall be furnished).

11 ANSWER:

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18 INTERROGATORY NO. 5. Identify the 7 persons that defendant believes
19 have the most knowledge of the defendant's hiring criteria for the
20 persons similarly situated to the plaintiff, including the prior
21 experience and/or education that was needed by most of the persons
22 who are (or were) similarly situated to the plaintiff and who were
23 hired by the defendant to work in the defendant's Assurance and
24 Advisory Business Services practice group. If any of those persons
25 are believed to have more knowledge than others specify the persons
26 with the greater knowledge, if all such persons are believed to have
27 equal knowledge so state. In the event that defendant believes
28 more than 7 persons have such a level of knowledge the defendant
shall identify any such 7 persons with such level of knowledge who

1 are still in the employ of the defendant and 7 such persons with
2 such level of knowledge who are no longer in the employ of the
3 defendant (if there are any such persons no longer in the employ of
4 the defendant, and for all such persons no longer in the employ of
5 the defendant the last known address of such persons shall be
6 furnished).

7 ANSWER:

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10 INTERROGATORY NO. 6. Identify the 7 persons that defendant believes
11 have the most knowledge of the defendant's hiring criteria for the
12 persons similarly situated to the plaintiff, including the prior
13 experience and/or education that was needed by most of the persons
14 who are (or were) similarly situated to the plaintiff and who were
15 hired by the defendant to work in the defendant's Tax Service
16 practice group. If any of those persons are believed to have more
17 knowledge than others specify the persons with the greater
18 knowledge, if all such persons are believed to have equal knowledge
19 so state. In the event that defendant believes more than 7 persons
20 have such a level of knowledge the defendant shall identify any such
21 7 persons with such level of knowledge who are still in the employ
22 of the defendant and 7 such persons with such level of knowledge who
23 are no longer in the employ of the defendant (if there are any such
24 persons no longer in the employ of the defendant, and for all such
25 persons no longer in the employ of the defendant the last known
26 address of such persons shall be furnished).

27 ANSWER:

28

1 INTERROGATORY NO. 7. Identify the 7 persons that defendant believes
2 have the most knowledge of the defendant's hiring criteria for the
3 persons similarly situated to the plaintiff, including the prior
4 experience and/or education that was needed by most of the persons
5 who are (or were) similarly situated to the plaintiff and who were
6 hired by the defendant to work in neither the defendant's Assurance
7 and Advisory Business Services practice group nor its Tax Service
8 practice group. If any of those persons are believed to have more
9 knowledge than others specify the persons with the greater
10 knowledge, if all such persons are believed to have equal knowledge
11 so state. In the event that defendant believes more than 7 persons
12 have such a level of knowledge the defendant shall identify any such
13 7 persons with such level of knowledge who are still in the employ
14 of the defendant and 7 such persons with such level of knowledge who
15 are no longer in the employ of the defendant (if there are any such
16 persons no longer in the employ of the defendant, and for all such
17 persons no longer in the employ of the defendant the last known
18 address of such persons shall be furnished).

19 ANSWER:
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23 INTERROGATORY NO. 8. Identify witnesses who may on the defendants'
24 behalf offer expert testimony in connection with the trial of this
25 matter, and for each such expert witness provide:

26 a) The name, residential address, business address,
27 qualifications and area of specialty of such expert witness;

28 b) The substance of the facts and opinion to which said
expert witness is expected to testify and the facts and/or grounds

1 upon which each witness bases his or her opinions; and

2 c) Identify all reports, letters, memos, correspondence and/or
3 documents of any kind prepared by or for each such witness with
4 regard to any matter at issue in this case.

5 ANSWER:

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9 INTERROGATORY NO. 8. Set forth the name and last known address of
10 each person similarly situated to the plaintiff who is no longer
11 employed by the defendant and for each such person specify their
12 position (job title(s) and department(s) employed in) while employed
13 by the defendant.

14 ANSWER:

15
16
17
18 Dated: Clark County, Nevada
19 February 7, 2007

20 Respectfully submitted,

21
22 _____
23 Leon Greenberg, Esq.
24 LEON GREENBERG PROFESSIONAL CORPORATION
25 THIERMAN LAW FIRM
26 Attorney for the Plaintiffs
27 633 South 4th Street - Suite 9
28 Las Vegas, Nevada 89101
(702) 383-6085
Nevada Bar Number: 8094

EXHIBIT "D"

1 CATHERINE A. CONWAY (SBN 98366)
GREGORY W. KNOPP (SBN 237615)
2 S. ADAM SPIEWAK (SBN 230872)
AKIN GUMP STRAUSS HAUER & FELD LLP
3 2029 Century Park East, Suite 2400
Los Angeles, California 90067-3012
4 Telephone: 310-229-1000
Facsimile: 310-229-1001
5 cconway@akingump.com
gknopp@akingump.com
6 aspiewak@akingump.com

7 Attorneys for Defendant, ERNST & YOUNG LLP

8 UNITED STATES DISTRICT COURT
9
10 NORTHERN DISTRICT OF CALIFORNIA
11 SAN JOSE DIVISION

12 DAVID HO, on behalf of himself and others
13 similarly situated and on behalf of the
general public and DOES 1-20

14 Plaintiff,

15 v.

16 ERNST & YOUNG, LLP

17 Defendant.

Case No. CV 05-04867 JF

[Assigned for all purposes to the Honorable
Jeremy Fogel, Department 3]

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**DEFENDANT'S RESPONSES TO
PLAINTIFF'S FIRST SET OF
INTERROGATORIES**

PROPOUNDING PARTY:

Plaintiff, David Ho

RESPONDING PARTY:

Defendant, Ernst & Young LLP

SET NUMBER:

One

1 Pursuant to Federal Rule of Civil Procedure 33, defendant Ernst & Young LLP ("Defendant" or
2 "E&Y"), hereby objects and responds as follows to the Interrogatories Set One propounded by plaintiff
3 David Ho ("Plaintiff").

4 **I. PRELIMINARY STATEMENT**

5 This response reflects only the current status of Defendant's knowledge, understanding and
6 belief respecting the matters about which inquiry has been made. Discovery in this action is ongoing
7 and, consequently, Defendant may not have yet identified all information responsive to these
8 Interrogatories Set One ("Interrogatories"). As discovery in this action proceeds, Defendant
9 anticipates that it may discover additional or different information or documents. Without in any way
10 obligating itself to do so, Defendant reserves the right to amend, modify, supplement, clarify or further
11 explain the response and objections at any time in the future.

12 Furthermore, this response is without prejudice to the right of Defendant to use or rely on at
13 any time, on any subsequently discovered information, or information omitted from the response as a
14 result of mistake, error, oversight or inadvertence. Defendant further reserves the right to provide
15 additional information and evidence at any time, and to object on appropriate grounds to the
16 introduction of any portion of the response into evidence.

17 This response is made solely for the purpose of and in relation to discovery conducted in this
18 case. This response is given subject to all appropriate objections (including but not limited to
19 objections concerning competency, privacy, relevancy, specificity, overbreadth, undue burden,
20 materiality, confidential proprietary or trade secret material, or admissibility), which would require the
21 exclusion of any response contained herein. All such objections therefore are reserved and may be
22 interposed at trial.

23 Defendant responds to this Interrogatory as it currently interprets and understands it. If
24 Plaintiff subsequently asserts an interpretation of the Interrogatory that differs from Defendant's
25 understanding, Defendant reserves its right to supplement its objections and/or response herein.
26
27
28

II. RESPONSES TO INTERROGATORIES**INTERROGATORY NO. 1**

Identify the 7 persons that defendant believes have the most knowledge of the work typically performed, or assigned to, or undertaken by most of the persons who are (or were) similarly situated to the plaintiff and who worked in the defendant's Assurance and Advisory Business Services practice group. If any of those persons are believed to have more knowledge than others specify the persons with the greater knowledge, if all such persons are believed to have equal knowledge so state. In the event that defendant believes more than 7 persons have such a level of knowledge the defendant shall identify any such 7 persons with such level of knowledge who are still in the employ of the defendant and 7 such persons with such level of knowledge who are no longer in the employ of the defendant (if there are any such persons no longer in the employ of the defendant, and for all such persons no longer in the employ of the defendant the last known address of such persons shall be furnished).

RESPONSE TO INTERROGATORY NO. 1

Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly situated to the plaintiff and who worked in Defendant's Assurance and Advisory business Services." Defendant is unaware of anyone who worked in AABS who is similarly situated to plaintiff, a Senior in International Tax. In addition Defendant objects to this Interrogatory to the extent that it assumes, without factual basis, that there is "work typically performed, or assigned to, or undertaken by" any group of persons. Defendant further objects to this Interrogatory to the extent that it seeks information that would more properly be obtained by noticing depositions under Rule 30(b)(6).

INTERROGATORY NO. 2

Identify the 7 persons that defendant believes have the most knowledge of the work typically performed, or assigned to, or undertaken by most of the persons who are (or were) similarly situated to the plaintiff and who worked in neither the defendant's Assurance and Advisory Business Services practice group or Tax Services practice group. If any of those persons are believed to have more knowledge than others specify the persons with the greater knowledge, if all such persons are believed

1 to have equal knowledge so state. In the event that defendant believes more than 7 persons have such a
2 level of knowledge the defendant shall identify any such 7 persons with such level of knowledge who
3 are still in the employ of the defendant and 7 such persons with such level of knowledge who are no
4 longer in the employ of the defendant (if there are any such persons no longer in the employ of the
5 defendant, and for all such persons no longer in the employ of the defendant the last known address of
6 such persons shall be furnished).

7 **RESPONSE TO INTERROGATORY NO. 2**

8 Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time
9 and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further
10 objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly
11 situated to the plaintiff and who worked in neither the defendant's Assurance and Advisory Business
12 Services practice group or [sic] Tax Services practice group." Defendant is unaware of anyone who
13 worked in neither AABS nor Tax who is similarly situated to plaintiff, a Senior in International Tax.
14 Defendant also objects to this Interrogatory to the extent that it assumes, without factual basis, that
15 there is "work typically performed, or assigned to, or undertaken by" any group of persons. Defendant
16 further objects to this Interrogatory to the extent that it seeks information that would more properly be
17 obtained by noticing depositions under Rule 30(b)(6).

18 **INTERROGATORY NO. 3**

19 Identify the 7 persons that defendant believes have the most knowledge of the work typically
20 performed, or assigned to, or undertaken by most of the persons who are (or were) similarly situated to
21 the plaintiff and who worked in the defendant's Tax Services practice group. If any of those persons
22 are believed to have more knowledge than others specify the persons with the greater knowledge, if all
23 such persons are believed to have equal knowledge so state. In the event that defendant believes more
24 than 7 persons have such a level of knowledge the defendant shall identify any such 7 persons with
25 such level of knowledge who are still in the employ of the defendant and 7 such persons with such
26 level of knowledge who are no longer in the employ of the defendant (if there are any such persons no
27 longer in the employ of the defendant, and for all such persons no longer in the employ of the
28 defendant the last known address of such persons shall be furnished).

RESPONSE TO INTERROGATORY NO. 3

Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly situated to the plaintiff." Defendant also objects to this Interrogatory to the extent that it assumes, without factual basis, that there is "work typically performed, or assigned to, or undertaken by" any group of persons. Defendant further objects to this Interrogatory to the extent that it seeks information that would more properly be obtained by noticing depositions under Rule 30(b)(6).

INTERROGATORY NO. 4

Identify the 7 persons that defendant believes have the most knowledge of the tasks, duties, responsibilities, and work that the persons who are (or were) similarly situated to the plaintiff were not to perform or be assigned (such limitation(s) being imposed by the defendant as a matter of policy). If any of those persons are believed to have more knowledge than others specify the persons with the greater knowledge, if all such persons are believed to have equal knowledge so state. In the event that defendant believes more than 7 persons have such a level of knowledge the defendant shall identify any such 7 persons with such level of knowledge who are still in the employ of the defendant and 7 such persons with such level of knowledge who are no longer in the employ of the defendant (if there are any such persons no longer in the employ of the defendant, and for all such persons no longer in the employ of the defendant the last known address of such persons shall be furnished).

RESPONSE TO INTERROGATORY NO. 4

Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly situated to the plaintiff." Defendant also objects to this Interrogatory to the extent that it assumes, without factual basis, that there are "tasks, duties, responsibilities, and work that [a group of individuals] were not to perform or be assigned (such limitation(s) being imposed by the defendant as a matter of policy". Defendant further objects to this Interrogatory to the extent that it seeks information that would more properly be obtained by noticing depositions under Rule 30(b)(6).

INTERROGATORY NO. 5

Identify the 7 persons that defendant believes have the most knowledge of the defendant's hiring criteria for the persons similarly situated to the plaintiff, including the prior experience and/or education that was needed by most of the persons who are (or were) similarly situated to the plaintiff and who were hired by the defendant to work in the defendant's Assurance and Advisory Business Services practice group. If any of those persons are believed to have more knowledge than others specify the persons with the greater knowledge, if all such persons are believed to have equal knowledge so state. In the event that defendant believes more than 7 persons have such a level of knowledge the defendant shall identify any such 7 persons with such level of knowledge who are still in the employ of the defendant and 7 such persons with such level of knowledge who are no longer in the employ of the defendant (if there are any such persons no longer in the employ of the defendant, and for all such persons no longer in the employ of the defendant the last known address of such persons shall be furnished).

RESPONSE TO INTERROGATORY NO. 5

Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly situated to the plaintiff and who were hired by the defendant to work in the defendant's Assurance and Advisory Business Services practice group." Defendant is unaware of anyone who was hired to work in AABS who is similarly situated to plaintiff, a Senior in International Tax. Defendant also objects to this Interrogatory to the extent that it assumes, without factual basis, that there is "work typically performed, or assigned to, or undertaken by" any group of persons. Defendant further objects to this Interrogatory to the extent that it seeks information that would more properly be obtained by noticing depositions under Rule 30(b)(6).

INTERROGATORY NO. 6

Identify the 7 persons that defendant believes have the most knowledge of the defendant's hiring criteria for the persons similarly situated to the plaintiff, including the prior experience and/or education that was needed by most of the persons who are (or were) similarly situated to the plaintiff

1 and who were hired by the defendant to work in the defendant's Tax Service practice group. If any of
2 those persons are believed to have more knowledge than others specify the persons with the greater
3 knowledge, if all such persons are believed to have equal knowledge so state. In the event that
4 defendant believes more than 7 persons have such a level of knowledge the defendant shall identify
5 any such 7 persons with such level of knowledge who are still in the employ of the defendant and 7
6 such persons with such level of knowledge who are no longer in the employ of the defendant (if there
7 are any such persons no longer in the employ of the defendant, and for all such persons no longer in
8 the employ of the defendant the last known address of such persons shall be furnished).

9 **RESPONSE TO INTERROGATORY NO. 6**

10 Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time
11 and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further
12 objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly
13 situated to the plaintiff and who were hired by the defendant to work in the defendant's Tax Service
14 practice group." Defendant also objects to this Interrogatory to the extent that it assumes, without
15 factual basis, that there is "work typically performed, or assigned to, or undertaken by" any group of
16 persons. Defendant further objects to this Interrogatory to the extent that it seeks information that
17 would more properly be obtained by noticing depositions under Rule 30(b)(6).

18 **INTERROGATORY NO. 7**

19 Identify the 7 persons that defendant believes have the most knowledge of the defendant's
20 hiring criteria for the persons similarly situated to the plaintiff, including the prior experience and/or
21 education that was needed by most of the persons who are (or were) similarly situated to the plaintiff
22 and who were hired by the defendant to work in neither the defendant's Assurance and Advisory
23 Business Services practice group nor its Tax Service practice group. If any of those persons are
24 believed to have more knowledge than others specify the persons with the greater knowledge, if all
25 such persons are believed to have equal knowledge so state. In the event that defendant believes more
26 than 7 persons have such a level of knowledge the defendant shall identify any such 7 persons with
27 such level of knowledge who are still in the employ of the defendant and 7 such persons with such
28 level of knowledge who are no longer in the employ of the defendant (if there are any such persons no

1 longer in the employ of the defendant, and for all such persons no longer in the employ of the
2 defendant the last known address of such persons shall be furnished).

3 **RESPONSE TO INTERROGATORY NO. 7**

4 Defendant objects to this Interrogatory on the ground that it is overbroad as to scope and time
5 and unduly burdensome to the extent that it seeks the names of seven individuals. Defendant further
6 objects to this Interrogatory on the ground that it is vague and ambiguous as to the term "similarly
7 situated to the plaintiff and who were hired by the defendant to work in neither the defendant's
8 Assurance and Advisory Business Services practice group nor its Tax Service practice group."
9 Defendant is unaware of anyone who worked in neither AABS nor Tax who is similarly situated to
10 plaintiff, a Senior in International Tax. Defendant also objects to this Interrogatory to the extent that it
11 assumes, without factual basis, that there is "work typically performed, or assigned to, or undertaken
12 by" any group of persons. Defendant further objects to this Interrogatory to the extent that it seeks
13 information that would more properly be obtained by noticing depositions under Rule 30(b)(6).

14 **INTERROGATORY NO. 8**

15 Identify witnesses who may on the defendants' behalf offer expert testimony in connection with
16 the trial of this matter, and for each such expert witness provide:

17 a) The name, residential address, business address, qualifications and area of specialty of
18 such expert witness;

19 b) The substance of the facts and opinion to which said expert witness is expected to
20 testify and the facts and/or grounds upon which each witness bases his or her opinions; and

21 c) Identify all reports, letters, memos, correspondence and/or documents of any kind
22 prepared by or for each such witness with regard to any matter at issue in this case.

23 **RESPONSE TO INTERROGATORY NO. 8**

24 Defendant objects to this Interrogatory on the ground that it is premature.

25 Subject to and without waiving the foregoing objections, Defendant responds as follows:

26 Defendant has not at this time identified any witnesses who may offer expert testimony in
27 connection with the trial of this matter. Defendant expressly reserves its right to identify such
28 witness(es) at a later date, and will supplement its response to this Interrogatory accordingly.

1 **INTERROGATORY NO. 8 [INCORRECTLY NUMBERED IN ORIGINAL]**

2 Set forth the name and last known address of each person similarly situated to the plaintiff who
3 is no longer employed by the defendant and for each such person specify their position (job title (s) and
4 department(s) employed in) while employed by the defendant.

5 **RESPONSE TO INTERROGATORY NO. 8 [INCORRECTLY NUMBERED IN ORIGINAL]**

6 Defendant objects to this Interrogatory on the ground that it is unduly burdensome. Defendant
7 further objects to this Interrogatory to the extent that it seeks information that is not relevant to the
8 subject matter of this dispute and is not reasonably calculated to lead to the discovery of admissible
9 evidence. Defendant further objects to this Interrogatory on the ground that it is overbroad and
10 premature because a class has not been certified in this action. Defendant further objects to this
11 Interrogatory on the ground that it violates third-party rights to privacy. Defendant also objects to this
12 Interrogatory on the ground that it is duplicative of discovery sought as part of Request for Production
13 No. 7.

14 Dated: March 12, 2007

15 AKIN GUMP STRAUSS HAUER & FELD LLP
16 Catherine A. Conway
17 Gregory W. Knopp
18 S. Adam Spiewak

19 By  _____
20 Gregory W. Knopp
21 Attorneys for Defendant Ernst & Young LLP
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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is: 2029 Century Park East, Suite 2400, Los Angeles, California 90067.

On March 12, 2007, I served the foregoing document(s) described as:

DEFENDANT'S RESPONSES TO PLAINTIFF'S FIRST SET OF INTERROGATORIES
on the interested party(ies) below, using the following means:

Mark R. Thierman, Esq.
THIERMAN LAW FIRM
7287 Lakeside Drive
Reno, Nevada 89511
Telephone: 775.284.1500
Facsimile: 775.703.5027

☒ BY UNITED STATES MAIL I enclosed the documents in a sealed envelope or package addressed to the respective address(es) of the party(ies) stated above and placed the envelope(s) for collection and mailing, following our ordinary business practices. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid at Los Angeles, California.

☒ (FEDERAL) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on March 12, 2007 at Los Angeles, California.

TANIA-LEE BAYLISS

[Print Name of Person Executing Proof]

[Signature]

EXHIBIT "E"

1 Mark R. Thierman, SB# 72913
2 Leon Greenberg, SB# 226253
THIERMAN LAW FIRM
3 7287 Lakeside Drive
Reno, NV 89511
4 Telephone (775) 284-1500

5 Attorneys for Plaintiffs

6 UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

7 -----X

8 DAVID HO, on behalf of himself
and all others similarly situated
and on behalf of the general
9 public and DOES #1-20,

Case No. 05-04867-JF (HRL)

10 Plaintiffs,

11 -against-

12
13 ERNST & YOUNG LLP

14 Defendants.

15 -----X

16 DECLARATION OF LEON GREENBERG, ESQ.

17 Leon Greenberg, hereby affirms, under the penalties of perjury,
18 that:

19
20 1. I am a member of the bar of this Court and the attorney
21 for the plaintiff in this case. I am offering this declaration to
22 detail my good faith efforts to avoid motion practice over the
23 parties' current discovery dispute (involving the plaintiff's third
24 request for production of documents and the plaintiff's first
25 interrogatory request for identification of witnesses).

26
27
28 2. On March 19, 2007, I corresponded in detail with the
defendant's counsel about the deficiencies in their response to the

1 plaintiff's first set of interrogatories. Subsequent to that date I
2 telephoned the defendant's counsel and spoke with them on several
3 different occasions about that issue (including on March 21, 2007,
4 March 27, 2007, and subsequently). Defendant's counsel has vaguely
5 represented to me a I would receive some sort of further and
6 unspecified response to such interrogatories, but I have not yet
7 received any such response nor any assurance that such a response
8 will fully comply with such requests.
9

10
11 3. On April 17, 2007, I wrote by fax to the defendant's
12 counsel setting forth in detail the deficiencies of their response
13 to the plaintiff's third request for production of documents. I
14 also telephoned such counsel and left a message urging them to call
15 me to discuss and resolve such issues. In both that message and
16 such correspondence I advised defendant's counsel that in one week's
17 time I would submit a motion to compel the documents being sought if
18 the issue was not resolved cooperatively by counsel. Defendant's
19 counsel has not seen fit to either telephone me to discuss such
20 production or respond to my letter.
21

22
23 4. I am filing this motion seven (7) days after notifying the
24 defendant's counsel of the deficiency of their document production
25 response (and over one month after advising them of the deficiency
26 of their interrogatory response). Under the circumstances this is
27 appropriate because:
28

i) Defendant's counsel has either not conferred at all

1 about this discovery or has not given any clear indication
2 that it has any intention of changing its position and
3 that it will provide the requested discovery;
4

5 ii) Discovery is set to close in this case, for the
6 purposes of class certification, no later than July 26,
7 2007 (plaintiff having to present its motion for class
8 certification on July 27, 2007). That is an extremely
9 short period of time as very little discovery has actually
10 been conducted. This time frame (which defendant's
11 counsel has, so far, refused to extend despite my request)
12 simply does not allow for the parties to take weeks to
13 discuss their discovery positions before seeking a ruling
14 from the Court.
15

16
17 iii) Defendant's counsel's previous suggestions that the
18 parties "confer" about discovery matters has led to a
19 substantial delay in moving discovery forward in this
20 litigation. Specifically, defendant's counsel took 37
21 days to finally advise plaintiff's counsel it would not
22 produce certain vitally important time/billing records.
23 That issue is now the subject of a motion to compel that
24 is before the Court (Docket # 40). The presentation of
25 that motion was unreasonably delayed by such dilatory
26 conduct by the defendant (Docket #40, Ex. "D", ¶ 6).
27
28

iv) Defendant's counsel, despite being aware of the very

1 short discovery schedule in this case, has not acted in a
2 diligent and prompt fashion to expedite discovery. It
3 waited the maximum amount of time to respond to the
4 plaintiff's third request for production of documents and
5 then served by mail a response objecting to any production
6 (which response took two weeks to arrive at the
7 plaintiff's counsel's office). This conduct by
8 defendant's counsel, if not intentionally undertaken to
9 deny discovery (by letting the discovery schedule "clock
10 run out"), manifests a lackadaisical, and inappropriate,
11 approach to resolving discovery issues in light of the
12 parties' discovery schedule. Defendant's counsel could
13 have, and should have, contacted plaintiff's counsel
14 within days of its receipt of the plaintiff's requests and
15 conferred with plaintiff's counsel on an expedited basis.
16 Having neglected to do so it cannot be heard to now
17 complain, under the circumstances of this case, that it
18 has not been afforded a sufficient opportunity to "confer"
19 about this matter.
20
21

22 I have read the foregoing, which is true and correct.
23

24 Affirmed this 23rd Day of April, 2007
25
26

27 /s/
28

Leon Greenberg

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of APRIL, 2007, a copy of the foregoing Plaintiff's Third Motion to Compel Production of Documents and Information from Defendant for hearing on May 29, 2007 and exhibits and proposed order were filed with the District Court's CM/ECF system and thus properly forwarded to all counsel through that system. I further certify that there are no counsel or parties appearing in this case who are not registered CM/ECF users and who would require service by mail of such materials.

Affirmed this 23rd day of April, 2007

/s/

Leon Greenberg